

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.d.

Meeting Type: Regular

Meeting Date: Jan 28, 2016

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Twickenham Square Estoppel Certificate and Consent regarding the Blade Sign.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Estoppel Certificate and Consent regarding the Revocable License Agreement between the City of Huntsville, Alabama, and Huntsville Hotels, III, LLC, for the Blade Sign at Twickenham Square.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Mary C. Cates

Date: 1/27/2016

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute an Estoppel Certificate and Consent by and between the City of Huntsville and Huntsville Hotels, III, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Estoppel Certificate and Consent between the City of Huntsville and Huntsville Hotels, III, LLC," consisting of fifteen (15) pages including Exhibit A, and the date of January 28, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 28th day of January, 2016.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 28th day of January, 2016.

Mayor of the City of
Huntsville, Alabama

THIS INSTRUMENT PREPARED BY:

Sarah E. Barr, Esq.
Latham & Watkins LLP
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611

STATE OF ALABAMA }

MADISON COUNTY }

Estoppel Certificate and Consent

Pursuant to that certain Revocable License Agreement, dated as of September 12, 2013 (the "Agreement"), The City of Huntsville, an Alabama municipal corporation ("City"), certifies, consents and agrees, to SHG SCG Ventures II, L.P., a Delaware limited partnership, and to its assignee, Hotel Huntsville, L.P., as buyer, and together with its successors, designees and assigns (collectively, "Buyer") under that certain Agreement of Purchase and Sale dated as of October 8, 2015, as may be amended from time to time, between Buyer and Huntsville Hotels III, LLC ("Seller"), as Seller and as current licensee under the Agreement (together with its successors and assigns, "Licensee"), and to any lender or other financing source of Buyer or any of Buyer's affiliates and their successors and assigns (collectively, "Lender"). Capitalized terms used herein but not otherwise defined shall have the meaning given to such terms in the Agreement. The undersigned hereby warrants, represents and consents, to each of Buyer and Lender as follows:

1. The Agreement is valid and in full force and effect and there are no other agreements between City and Licensee with respect to that certain Blade Sign (as defined in the Agreement). A true, correct and complete copy of the Agreement is attached hereto as Exhibit A. There are no amendments, modifications, supplements or written waivers of the Agreement.

2. The City licenses to Licensee a revocable license (the "License") to occupy the Sign Space (as defined in the Agreement) for the Blade Sign as provided for in the Agreement.

3. The term of the Agreement commenced on September 12, 2013 and will expire on January 1, 2040 (the "Term"). There are no options to extend or renew the Term provided in the Agreement.

4. Either party may terminate the License at any time by notifying the other party of its intention to terminate the License. No party has notified the other party of its intention to terminate the License.

5. Licensee has paid the City \$100 in satisfaction of Section 3 of the Agreement, and no further amounts are due and owing by Licensee to City.

6. The Blade Sign was constructed as set forth in the Agreement and approved by the City's Manager of Planning Administration, as provided in the Agreement.

7. City has not given or received any notice of a default under the Agreement. To the knowledge of the undersigned, there are no uncured defaults on the part of Licensee or on the part of City under the Agreement. To the knowledge of the undersigned, there are no events which with the giving of notice or passage of time would constitute a default under the Agreement.

8. There are no actions, whether voluntary or otherwise, pending or threatened against the City pursuant to the bankruptcy or insolvency laws of the United States or any similar state laws.

9. The City hereby consents to the Licensee's assignment of the Agreement to Buyer or its designee, and Buyer hereby agrees to be bound by the provisions of the Agreement and the License, from and after the date Buyer acquires the Hotel Site and Hotel Building (each as defined in the Agreement).

10. The party executing this certification on behalf of City represents that he/she is authorized to do so on behalf of City.

11. Buyer and Lender may rely on the certifications and consents set forth herein.

[Remainder of Page Intentionally Left Blank;
Signature Pages to Follow]

IN WITNESS WHEREOF, City and Buyer have caused this Estoppel Certificate and Consent to be executed under seal and delivered as of the date first above written.

CITY

**CITY OF HUNTSVILLE,
an Alabama municipal corporation**

By: _____

Name: Tommy Battle

Title: Mayor

STATE OF ALABAMA }
 }
COUNTY OF MADISON }ss
 }

I, the undersigned a Notary Public in and for said County in said State, hereby certify that Tommy Battle, whose name as Mayor of the City of Huntsville, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Alabama municipal corporation.

Given under my hand and official seal this 28th day of January, 2016.

[SEAL]

Notary Public

My commission expires: _____

SIGNATURES CONTINUED

BUYER, solely with respect to paragraph 9

**HOTEL HUNTSVILLE, L.P.,
a Delaware limited partnership**

**By: Hotel Huntsville GP, L.L.C.,
a Delaware limited liability company,
its General Partner**

**By: SHG SCG II Propco Holdings, L.P.,
a Delaware limited partnership,
its sole member**

**By: SHG SCG Propco Holdings GP, L.L.C.,
a Delaware limited liability company,
its general partner**

**By: SHG SCG Ventures II, L.P.,
a Delaware limited partnership,
its sole member**

**By: S&S GP Interests II, L.L.C.,
a Kentucky limited liability company,
its general partner**

By: _____
Name: _____
Title: _____

STATE OF ALABAMA }
 } ss
COUNTY OF MADISON }

I, the undersigned a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Hotel Huntsville, L.P. a Delaware limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Delaware limited partnership.

Given under my hand and official seal this _____ day of _____, 2016.

[SEAL]

Notary Public
My commission expires: _____

EXHIBIT A

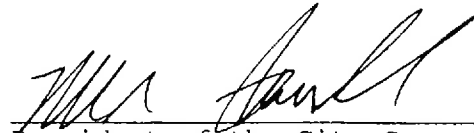
AGREEMENT

[see attached]

RESOLUTION NO. 13- 668

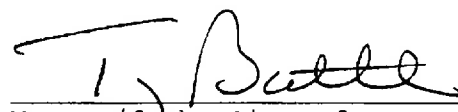
BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with Huntsville Hotels III, LLC , on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE, ALABAMA AND HUNTSVILLE HOTELS III, LLC" consisting of seven(7) pages + Exhibits A and B, and the date of September 12, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of September , 2013.



President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 12th day of September , 2013.



Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA
MADISON COUNTY

Revocable License Agreement between the City of
Huntsville, Alabama and Huntsville Hotels III,
LLC

REVOCABLE LICENSE AGREEMENT

This Revocable License Agreement ("License") is made and entered into on the 12th day of September, 2013, by and between the City of Huntsville, a municipal corporation in the state of Alabama, hereinafter referred to as "City," and Huntsville Hotels III, LLC, an Alabama limited liability company hereinafter referred to as "Huntsville Hotels".

WITNESSETH:

WHEREAS, Huntsville Hotels is the owner of property located at 714 Gallatin Street SW in the city of Huntsville, Alabama (the "Hotel Site") on which it will construct a 101 room and suite hotel building (the "Hotel Building") to be operated as a Homewood Suites Hotel; and

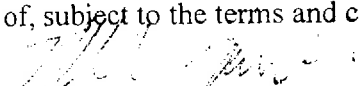
WHEREAS, Huntsville Hotels desires to affix the attached accessory sign, also known as a blade sign, shown on Exhibit A, which is attached hereto and incorporated herein by reference, (the "Blade Sign") to the exterior eastern portion of the Hotel Building along Gallatin Street at the location for the Blade Sign shown on Exhibit B, which is attached hereto and incorporated herein by reference, at an elevation starting at 17 feet above grade and projecting from the face of the Hotel Building 33 inches; and

WHEREAS, adjacent to the Hotel Site is City property, which includes, but is not necessarily limited to a public sidewalk; and

WHEREAS, the Blade Sign will extend, at an elevation starting at 17 feet above grade, over the property line of the Hotel Site and into to public air space above the public sidewalk immediately adjacent to the Hotel Site approximately 2 feet $\frac{3}{4}$ inches (the "Sign Space"); and

WHEREAS, the Zoning Ordinance for the City of Huntsville, Alabama allows attached accessory signs in the zoning district in question to project 16 inches from the building and the Board of Zoning Adjustment of the City of Huntsville, Alabama granted a variance for the proposed sign in order to allow it to project an additional 17 inches from the face of the Hotel Building subject to the applicant's obtaining from the City a right to use the public air space above the public sidewalk; and

WHEREAS, the City is desirous of granting to Huntsville Hotels a revocable license to occupy the Sign Space for its Blade Sign, which space the City is not currently using or in need of, subject to the terms and conditions of this License.



City Council President

September 12, 2013
Date

NOW, THEREFORE in consideration of the mutual benefits and premises contained herein, which premises are incorporated herein by reference, the City and Huntsville Hotels agree as follows:

1. Subject to the terms and conditions hereinafter set forth, Huntsville Hotels is hereby granted a revocable license to occupy the Sign Space in order to install and maintain the Blade Sign and for no other purpose. Such right includes the temporary right to use the public sidewalk adjacent to the building for the installation, periodic maintenance, and removal of the Blade Sign. All cost, expense, and risk associated with the installation, maintenance, and removal of the Blade Sign and the use of City property shall be that of Huntsville Hotels, including without limitation the cost of utilities associated with the illumination of the Blade Sign, which utilities Huntsville Hotels shall be solely responsible for obtaining. In no event shall the City, its present and future officials, officers, employees, agents, contractors, and subcontractors incur any costs whatsoever associated with the Blade Sign or be liable to Huntsville Hotels for any damage to or destruction of the Blade Sign regardless of the cause.

2. All notices or demands pursuant to this License shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to:	Manager of Planning Administration City of Huntsville 308 Fountain Circle Huntsville, AL 35801
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If to Huntsville Hotels, to:	Huntsville Hotels III, LLC c/o PHD Hotels, Inc. 3320 Skyway Drive, Suite 710 Opelika, AL 36801
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All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, certified mail, three (3) days after mailing. Nothing herein shall prevent the parties from effecting personal delivery via e-mail.

3. Unless revoked or terminated sooner, as hereinafter provided, the term of this License shall be for a period commencing on the date written above and ending January 1, 2040. Huntsville Hotels shall pay to the City a non-refundable license fee of \$100.00 at the beginning of the term.

4. Under this License Huntsville Hotels understands and agrees that it acquires no vested right to the use of City property or any portion thereof, including without limitation the Sign Space. The City, through its Manager of Planning Administration, her successor or their respective designee or designees (hereinafter "Manager"), may, at any time, terminate this License and revoke all rights granted hereunder, by notifying Huntsville Hotels of same.

Huntsville Hotels may, at any time, terminate this License by notifying the Manager of its intent to do so.

5. Huntsville Hotels shall, at its sole cost and expense, install and maintain the Blade Sign, including without limitation its components, in good condition, order, and repair, and in a safe and presentable manner free from graffiti. Damage to the Blade Sign shall be repaired as soon as practicable. Maintenance to the Blade Sign, including its components, shall include but not necessarily be limited to routine maintenance such as regular cleaning and minor repairs, and to non-routine maintenance such as major repairs or reconstruction. Huntsville Hotels, or those otherwise performing on its behalf, shall not damage or deface public property nor interfere with the general operation and use of City property, including without limitation public streets and sidewalks and other improvements such as landscaping and irrigation systems. Huntsville Hotels shall promptly remove or correct, to the satisfaction of the Manager, any obstruction, damage, or defect in any City property, including without limitation the right-of-way, caused by Huntsville Hotels, or those otherwise performing on its behalf.

6. Huntsville Hotels agrees to comply with all federal, state, and local ordinances, laws, rules, and regulations applicable to the installation and maintenance of the Blade Sign and the rights granted hereunder, including without limitation the use of City property, as such may be from time to time amended, and shall not use City property in an unlawful manner. Huntsville Hotels shall be responsible for obtaining all required licenses and permits in connection with the Blade Sign including without limitation building and electrical permitting.

7. Proposed schedules for the installation, non-routine maintenance, and removal the Blade Sign, including without limitation components thereof, shall be submitted to the Manager for her prior approval. The Manager may approve the schedule, or provide an alternate schedule for the proposed activity where she finds that the proposed schedule would likely interfere with City activities or projects, City permitted or licensed activities, special events, utilities projects, or other such use of City property (hereinafter referred to collectively as "protected activities"). The Manager may at any time and from time to time require Huntsville Hotels to stop any work being performed on City property in regard to the Blade Sign where she finds that such activity is interfering with protected activities or has the likelihood of posing a risk to the public health, safety, or welfare. The Manager shall have the right to inspect the installation at any time and from time to time and order remediation where she determines that City property has been damaged or defaced by the installation.

8. Huntsville Hotels hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City, its present and future officials, officers, employees, agents, contractors, and subcontractors from and against any and all claims, actions, judgments, damages of any kind or nature, fines, costs, liabilities, interest, or losses (including reasonable attorneys' fees and expenses and court costs and fees, through appeal), together with all costs and expenses of any kind or nature, which arise directly or indirectly from Huntsville Hotels' exercise of the rights granted by this License including but not limited to Huntsville Hotels' intentional or negligent acts or failures to act, either sole or concurrent, with respect to all or any of its obligations, performances, or other actions contemplated in this License (including but not

limited to the intentional or negligent acts or failures to act, either sole or concurrent, of Huntsville Hotels' employees, agents, contractors, subcontractors, and volunteers).

Nothing contained in this paragraph 8 shall be construed as a waiver of any immunity of statutory protection of the City and no third party may expand any recovery against the City due to Huntsville Hotels' duty of indemnification.

This paragraph shall survive the expiration, revocation, or termination of this License.

9. Upon expiration, revocation, or the termination of this License, Huntsville Hotels shall, at its sole cost, expense, and risk, within 30 days of the removal order of the Manager, remove the Blade Sign and restore the City property to the condition it was in immediately prior to the installation of the Blade Sign, as determined by the Manager. Failing therein, Huntsville Hotels shall pay to the City as liquidated damages \$100.00 for each day that Huntsville Hotels does not comply with the removal order.

10. Subject to the consent of the City, which shall not be unreasonably withheld, this License and the rights and obligations of Huntsville Hotels hereunder may be assigned or transferred to any person or entity that succeeds to the interest of Huntsville Hotels in the Hotel Site. Any assignee or transferee shall continue to be subject to all of the provisions of this License.

11. Huntsville Hotels shall maintain insurance coverage throughout the term of this License and shall include the licensed area, including without limitation the public sidewalk and Sign Space in the premises on its insurance policy and shall name the City as additional insured.

12. Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

13. This License shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

14. Any and all disputes arising out of this License shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation, and enforcement of this License shall be instituted and litigated in the courts of Alabama. Huntsville Hotels submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

15. This License contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise, or agreement, oral or written, between Huntsville Hotels and the City and not incorporated herein shall be of any force or effect. Any amendment to this License shall be in writing and executed by Huntsville Hotels and the City.

16. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License.

IN WITNESS WHEREOF the parties have entered into this License on the date first above written.

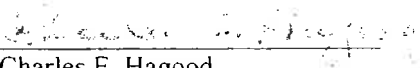
[SIGNATURES ON NEXT PAGE]

Signature Page to Revocable License Agreement between The City of Huntsville, Alabama and Huntsville Hotels III, LLC

THE CITY OF HUNTSVILLE, ALABAMA

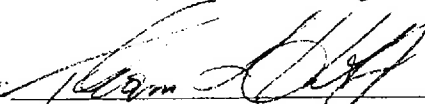
By: 
Tommy Battle, Mayor

ATTEST:

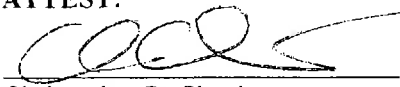

Charles E. Hagood
City Clerk-Treasurer

HUNTSVILLE HOTELS III, LLC

By: PHD Hotels, Inc., as its Manager

By: 
Thomas L. Hunt, Jr., as its President

ATTEST:

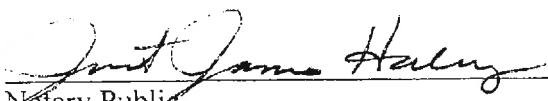

Christopher D. Chavis

**STATE OF ALABAMA
LEE COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Thomas L. Hunt, Jr., whose name as President of PHD Hotels, Inc. as Manager of Huntsville Hotels III, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, as such officer with such authority, executed the same voluntarily on behalf of PHD Hotels, Inc. as Manager of Huntsville Hotels III, LLC on the day the same bears date.

Given under my hand and official seal this 15th day of August, 2013.

(NOTARIAL SEAL)

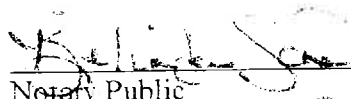

Notary Public
My commission expires Sept 06, 2015

**STATE OF ALABAMA
MADISON COUNTY**

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Tommy Battle, whose name as Mayor of The City of Huntsville, Alabama, and Charles E. Hagood, whose name as the City Clerk-Treasurer of The City of Huntsville, Alabama are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that being informed of the contents of said instrument. they, as such officers with such authority, executed the same voluntarily on behalf of The City of Huntsville, Alabama on the day the same bears date.

Given under my hand and official seal this 27th day of August, 2013.

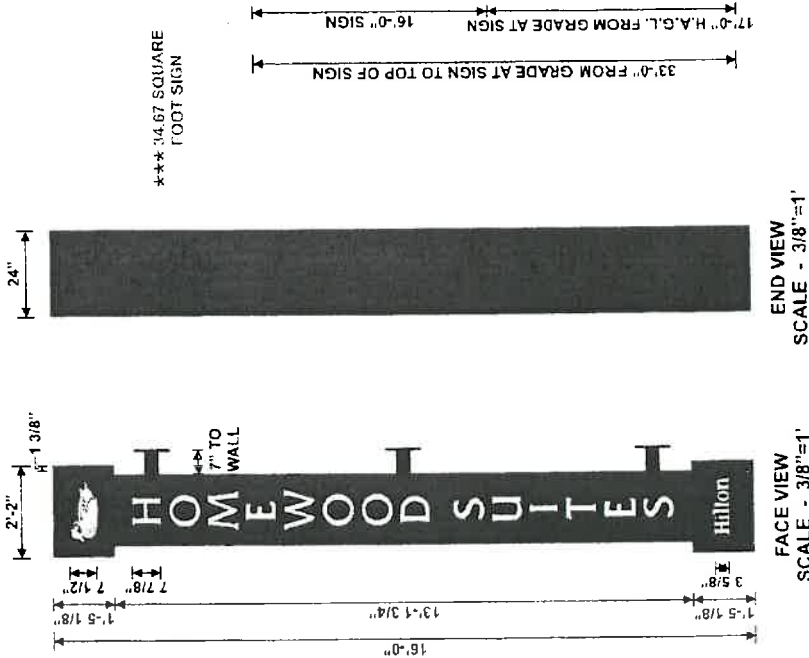
(NOTARIAL SEAL)



Notary Public
My commission expires 8.1.2016

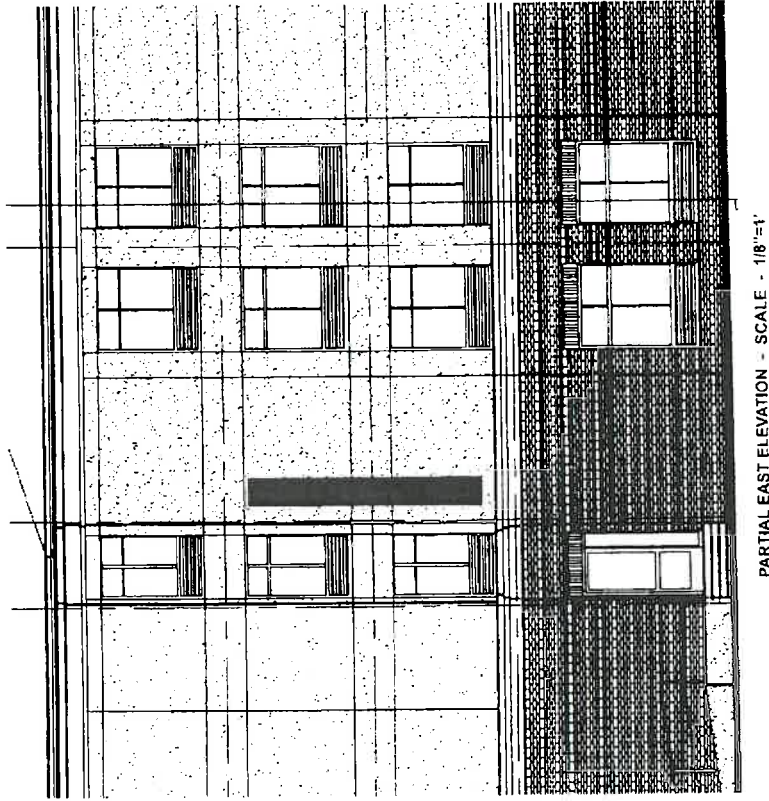
THIS INSTRUMENT PREPARED BY:
Mark A. Franco, Esq.
Copeland, Franco, Screws & Gill, P.A.
444 South Perry Street
Montgomery, AL 36104

Exhibit A

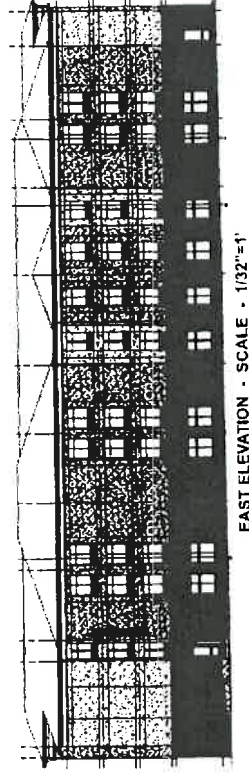


DOUBLE FACED INT. ILLUM. BLADE SIGN:
ALUMINUM FRAMED CABINET SHEETED WITH .063 ALUM.
AND PAINTED MATTHEWS MP 18315 TEAL GREEN.
FACES TO BE WHITE FLEX-FACE WITH 3M 3630-6949 TEAL GREEN
3M 3630-4311 TOMATO RED VINYL APPLIED FIRST SURFACE.


SIGN CABINET TO BE 24" DEEP.
INTERNALLY ILLUMINATED WITH H.O. FLUORESCENT BULBS.
*** CERTIFIED ENGINEERING ON HOW SIGN WILL MOUNT TO BUILDING IS FORTHCOMING UPON APPROVAL OF CONCEPT.



PARTIAL EAST ELEVATION - SCALE - 1/8"=1'



FAST ELEVATION - SCALE - 1/32"=1'



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DATE: 06/20/13

SCALE: AS NOTED

SALES: J. PEAKE

DRAWN BY: STOLP

CLIENT: HOMWOOD SHIRES

LOCATION: HUNTSVILLE, AL

DRAWING #

HWS, Huntsville, AL-BSrb

NOTES:

DATE	REVISIONS	DESCRIPTION
03/08/13	01	NEW DESIGN
03/25/13	02	ANOTHER NEW DESIGN
04/26/13	03	BACK TO 1 BUT 16'-0"
04/24/13	04	DEEP
04/25/13	05	2'-2" WIDTH
06/20/13	06	17'-0" HANGING

CUSTOMER APPROVAL:

DATE: _____

DATE: _____

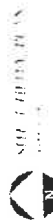


Exhibit B

$$f^{\alpha} = \frac{1}{\Gamma(\alpha)} \int_0^\infty e^{-t} t^{\alpha-1} f(t) dt$$